# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1887.

## No. 1381.

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THE UNITED STATES, APPELLANT,

vs.

EDWARD T. STRONG.

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APPEAL FROM THE COURT OF CLAIMS.

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United States Court of Claims.

[Filed July 17th, 1886.—A. H.]

EDWARD T. STRONG
vs.
THE UNITED STATES.
No. 15205.

I.—*Petition.*

To the honorable the judges of the said court:

Your petitioner respectfully shows to your honors:

1. That he is an officer in the United States Navy, being a lieutenant-commander, having been duly commissioned as such on the 2d day of July, 1882.

2. That under an order of the honorable the Secretary of the Navy on the 4th day of February, 1886, he was ordered to report for duty on the United States receiving ship "Wabash" in Boston Harbor, and that in compliance with such order he reported for such duty on board the said ship on the 20th day of February, 1886, and continued from that time henceforth to discharge the duties on board such ship until the 11th day of May, 1886, when he was discharged from service thereon.

3. That said ship was put in commission on the 28th day of October, 1875, at the Boston navy-yard, and that she is now anchored in Boston Harbor, and that the said vessel is now and has been under the

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orders and direction of the Secretary of the Navy, and is employed in her present service by authority of law.

4. That your said petitioner while on duty on board of the "Wabash" performed the duties of executive officer, which duties are similar to those of an executive on board a cruising ship; that during that time he was required to have his quarters on board the vessel and wear his uniform, and was not permitted by the rules of the service to live with his family.

5. That the "Wabash" has remained in the same place in which she is now anchored since October 28, 1875; that she is a steam vessel, and could be sent to sea, but is not in condition for cruising with safety without extensive repairs being made for sea service.

6. That his equipment is the same as that of an officer performing corresponding duties on board of a cruising ship; and that during the period which he has been attached to the said vessel he has had his quarters thereon, and that he has discharged duties of the same character as hereinabove described.

7. Your petitioner charges that the character of duty performed by him on board the United States receiving ship "Wabash" from the 20th day of February, 1886, to the 11th day of May, 1886, and down to and including the 11th day of May, 1886, entitled him to receive the sea pay of a lieutenant-commander, to wit, at the rate of $2,800 per annum as his pay, and in addition thereto 30 cents per diem as ration money; but that since the said 20th day of February, 1886, when he reported for duty on the said ship, down to the 11th day of May, 1886, he has only been allowed by the accounting officer of the Treasury, and has only received, pay at the

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rate of $2,400 per annum, the same being the pay of an officer of his grade and rank as such when on shore duty.

Your petitioner claims the difference in pay between the shore pay and the sea pay for the period of his service on board of the "Wabash," and prays judgment in the sum of $113.07, the same being the amount thereof. That he is the sole owner of this claim, and that he has made no assignment of the same nor any part thereof, and has at all times borne true allegiance to the Government of the United States, and has never in any way given aid or comfort to its enemies.

EDWARD T. STRONG,
*Lieutenant-Commander, U. S. N.*

LINDEN KENT,
*Attorney.*

UNITED STATES OF AMERICA,
*Commonwealth of Massachusetts, Suffolk ss:*

This day before me personally appeared Edward T. Strong, a lieutenant-commander in the United States Navy, being personally well known to me to be the person who executed the above instrument, and being duly sworn says that the contents thereof stated of his knowledge are true, and those upon information and belief he believes to be true.

Given under my hand and notarial seal this the 14th day of July, 1886.

[SEAL.] GEORGE H. WASHBURN,
*Notary Public.*

4 II.—*General traverse.—Filed Sep't* 22, 1886.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

ROBERT A. HOWARD,
*Assistant Attorney-General.*

5 III.—*Findings of fact and conclusion of law.*

FINDINGS OF FACT.

The court upon the evidence finds the facts as follows:

I.

The claimant was a lieutenant-commander in the United States Navy, of less than five years' standing, during all the period covered by this claim.

II.

On the 4th day of February, 1866, claimant was ordered to report on board the United States receiving ship Wabash, for duty, and did so re-

port on the 20th day of February, 1886, and continued from that time henceforth, down to the 4th day of May, 1886, to discharge his duties on board said ship; that he performed the duties of executive officer of said vessel, which said duties are similar to those of executive officers on cruising ships, and in addition to these general duties he had others which were more exacting and arduous than those on board cruising ships.

III.

Said duties and the character of the service of the claimant have remained the same since the date he reported for duty on said vessel.

IV.

During the time he was attached to said vessel claimant was required to have his quarters on board, and was obliged to wear his uniform, to mess there, and was not permitted by the rules of the service to live with his family.

V.

Since the date when the claimant reported on board the Wabash she has been anchored in Boston Harbor, about 300 feet from the shore, to which there was communication by means of boats.

VI.

During the entire period of his service on board said vessel he has been allowed only shore pay of an officer of his grade, and has neither been allowed a ration nor commutation therefor.

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VII.

The Wabash has remained in the same place in which she was anchored since the 28th day of October, 1875; the said vessel is now, has been, and was, during the period of service thereon by the claimant, under the orders and direction of the Secretary of the Navy; during the period of the claimant's service thereon she was not in a safe condition for cruising; she is a sailing and steam vessel, and had on board sails, spars, and tackle; she was capable of being taken out to sea under steam, her machinery and boilers being sufficient for that purpose; she could have been taken out to sea under sail, but in the condition of her boilers and machinery and her sailing apparatus, without repairs, it would not, in either case, have been advisable or safe.

VIII.

On the 4th of February, 1886, the claimant was ordered to report for duty on board the United States receiving ship Wabash, as follows:

NAVY DEPARTMENT,
*Washington, February* 4, 1886.

SIR: Proceed to Boston, Mass., and report to Commander Kimberly, on the 20th instant, for duty as executive on board the United States receiving ship Wabash.

This employment on shore duty is required by the public interests, and such service will continue until 20th February, 1889, unless it is otherwise ordered.

Respectfully,

W. C. WHITNEY,
*Secretary of the Navy.*

Lieut. Com. EDWARD T. STRONG, U. S. Navy,
*Wakefield, Mass.*

## IX.

Claimant's service aboard the United States receiving ship Wabash continued from the 20th day of February, 1886, until the 4th of May, 1886, during which period he has been allowed and paid shore pay of an officer of his grade, and has not been allowed a ration nor commutation therefor.

## X.

United States receiving ship Wabash, during the time of claimant's service thereon, was not in what is technically known as a commission for sea service.

## XI.

Duty on board a receiving ship since 1843 has not been regarded as "sea service." The Navy order then adopted was as follows:

NAVY DEPARTMENT, *November* 1, 1843.

The receiving ships at the several stations are not to be considered "vessels in commission for sea service," except, as may sometimes be the case, while going from one port to another.

DAVID HENSHAW,
*Secretary of the Navy.*

## XII.

Receiving ships are not regarded by the accounting officers of the Treasury as vessels in commission for sea service, nor their officers as
7 entitled to sea pay or rations allowed to officers on sea duty. (Digest of Second Comptroller's Opinions of 1853, par. 561; Comptroller's Digest of 1869, par. 1840.)

## XIII.

A note is printed in the Navy Register of 1859 and 1860, as follows:

NOTE.—The sea and other service affixed to the names of officers in the Register is computed to the 1st of January, 1859. As a general rule the "sea service" with which an officer is credited is for duty performed under orders from the Department as part of the complement of a vessel of war belonging to the Navy in commission for sea service. Officers on the Coast Survey are allowed sea service for the time they are actually afloat. No credit is given for service in revenue and merchant vessels. * * *

## XIV.

Sea pay and rations are not allowed to officers attached to vessels not in commission for sea service.

## XV.

Naval Regulations of 1876, p. 85, par. 38, is as follows:

Duty on board a sea-going vessel of the Navy in commission, on board a practice ship at sea, or on board a Coast Survey vessel actually employed at sea, will be regarded by the Department as sea service.

## XVI.

By Naval Regulations sea pay is sometimes allowed naval officers when not "at sea."

## XVII.

The Wabash is a receiving ship, built of wood, about thirty-one years old, stationed at the navy-yard in Boston for over twelve years past. The vessel is and has been used as a naval recruiting station whilst at the Boston navy-yard. There is a roof built over the deck. The ship is connected and communicates with shore by a rope. There is a large boat or scow that plies between the ship and the wharf by means of a crank and connected with the rope. Steam is used only for heating purposes and pumps. All the anchors have never been taken up at the same time. Row boats were also used in going to and from the ship.

## XVIII.

It has been the general custom only to allow sea pay to officers attached to vessels in commission for sea service.

## XIX.

During the period of service for which claimant demands sea pay in this suit the Wabash has not been in commission for sea service as by the designation of the Secretary of the Navy.

### CONCLUSION OF LAW.

Upon the foregoing findings the court determines, as a conclusion of law, that the claimant is entitled to recover the sum of $111.20.

8 ## IV.—*Opinion.*

WELDON, J., delivered the opinion of the court:

The claimant alleges as a cause of action an unpaid balance due him as a lieutenant-commander in the Navy for a period commencing on the 20th day of February and ending on the 11th of May, 1886. During that time he was paid for "shore service," when, as he alleges, he should have been paid for "sea service," and this suit is brought to recover the difference

of pay between the two forms of duty. A case very similar, if not identical with the one made by the findings in this proceeding, was determined by this court in favor of the claimant, which, on appeal, was affirmed by the Supreme Court.

(Symons v. United States, 21 C. Cls. R., 148.)

(United States v. Symonds, 120 U. S. R., 46.)

It is argued by counsel for the Government that this case does not come within the law announced in the Symonds case, because of a difference in fact between a receiving ship and a training ship in the character of service performed on each.

The ship in the Symonds case (the New Hampshire) was ordered by the Secretary of the Navy, on the 30th of June, 1881, in commission "for sea service," but on the 7th of July, 1882, that order was modified as follows: "Will not be considered in commission for sea service." The nature of the service continued under the second order, although the technical commission of the ship was changed by the direction of the Secretary. Notwithstanding that change, the Court of Claims held that the original service being essentially sea service was unaffected by the order of the Secretary, and this view of the law was affirmed by the Supreme Court.

Section 1571, Revised Statutes, was intended to define sea service, and it is not reserved to the Secretary of the Navy to perform that duty by a regulation. (Symonds Case, C. Cls. R., 154.)

Said section provides:

"No service shall be regarded as sea service except such as are performed at sea, under the orders of a Department, and in vessels employed by authority of law."

Under this provision of the statute three facts are necessary to constitute sea service, to wit, "performed at sea"—"under the orders of a Department"—"employed by authority of law." If these concur in a given service they confer upon the party the legal right to have the pay allowed by law for such service.

"At sea," as was determined in the Symonds case, does not require that the ship be on the "high sea," but upon waters of the sea. And the condition of the Wabash, the ship in this case, is in law and fact the exact condition of the ship in the Symonds case. "Under the orders of a Department," as used in the statute, simply requires that the service for which the party claims shall be performed by the direction and at the instance of a Department. Without the sanction, requisition, or order of a Department the services would be without legal consideration; and for such services no recovery could be had. But while the sanction or order of a Department is necessary, it does not follow that such Department may arbitrarily indicate the legal character of such service, and thereby determine the compensation incident to such service.

9 No question can arise in this case upon the last requisite "employed by authority of law," because the vessel belonged to the Navy, and was in the service of that branch of the Government in the performance of a duty clearly within the power of that Department. The Supreme Court says:

"We concur in the conclusion reached by the Court of Claims, namely, that the sea pay given in section 1556 may be earned by services performed under the orders of the Navy Department, in a vessel employed

with authority of law in active service in bays, inlets, roadsteads, or other arms of the sea, under the general restrictions, regulations, and requirements that are incident or peculiar to service on the high seas. She was a training ship, anchored in Narragansett Bay during the whole time covered by the claim of appellee, and was subject to such regulations as would have been enforced had she been put in order and used for the purpose of cruising, or as a practice ship at sea. Within the meaning of the law, Symonds when performing his duties as executive officer of the New Hampshire was 'at sea.'"

The defense seeks to distinguish the services in this case from the service in the Symonds's, and much stress is laid on the term "active," as used by the Supreme Court in the designation of the duty performed by Symonds. It is impossible to discriminate in law between the services in the two cases. The one may be more active than the other, but they are both active in the performance of a duty, differing, it may be, in degree, but not affecting the question of compensation.

The highest form of activity may be discharged in a naval engagement, and the lowest form may be on a receiving ship, but the court can not establish legal principles founded on degrees of activity. Such a distinction would introduce into the administration of the law an element subversive of general principles, and tend to the confusion of a system which otherwise would be plain and consistent.

The issue is not a question of discipline or government in the Navy, and does not affect the prerogative of the Secretary; but it is a simple question of compensation—of pecuniary right, and to the forum of judicial determination must that right be committed.

Unable as we are to discern any difference in law between the Symonds case and the case of the claimant, we must follow the authority of the Supreme Court and find the issues for the petitioner. It is, therefore, the judgment of the court that he recover from the defendants the sum of $111.20.

10 V.—*Final judgment.*

At a Court of Claims held in the city of Washington, D. C., on the 12th day of December, A. D. 1887, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the claimant and do order, adjudge, and decree that the said Edward T. Strong do have and recover of and from the United States the sum of one hundred and eleven $\frac{20}{100}$ dollars ($111.20).

11 VI.—*Application of defendants for appeal.—Filed Feb'y 8, 1888.*

From the judgment rendered in the above entitled cause on the 12th day of Dec'r, 1887, in favor of claimant, the defendants, by their Attorney-General, on the 8th day of Feb'y, 1888, make application for, and give notice of, an appeal to the Supreme Court of the United States.

ROBERT A. HOWARD,
*Ass't Attorney-General.*

Allowed in open court Febr'y 8, 1888.

WILLIAM A. RICHARDSON,
*Chief Justice.*

12 In the Court of Claims.

VII.

EDWARD T. STRONG
vs.
THE UNITED STATES. } No. 15205.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the opinion of the court, of the final judgment of the court, of the application of defendants for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this second day of March, A. D. 1888.

[SEAL.] JOHN RANDOLPH,
*Asst. Clerk Court of Claims.*

(Indorsement on cover:) No. 1381. The United States, appellant, vs. Edward T. Strong. Court of Claims. Filed March 6, 1888.

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FILED
MAR 23 1887
JAMES H. McKENNEY

# In the Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES, APPELLANT,
vs.
EDWARD T. STRONG.

No. 1331.

APPEAL FROM THE COURT OF CLAIMS.

# In the Supreme Court of the United States.

OCTOBER TERM, 1887.

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THE UNITED STATES, APPELLANT,
*vs.*
EDWARD T. STRONG. } No. 1381.

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## APPEAL FROM THE COURT OF CLAIMS.

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***STATEMENT AND BRIEF OF ARGUMENT FOR APPELLANT.***

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### STATEMENT OF THE CASE.

Edward T. Strong was in the year 1886 a lieutenant-commander in the Navy. He was ordered by the Secretary of the Navy, on the 4th of February of that year, for duty on board the United States "receiving ship *Wabash*." The duty was designated in the order as *shore* duty (Finding VIII). He reported on the 20th of February, 1886, and performed the duties of executive officer from that date until the 4th of May following.

Notwithstanding his assignment to service, recognized in the Navy as shore duty and so established by Navy regulations, he brings suit for the difference in pay between shore-duty pay and sea pay for the period of his service on board the *Wabash*, amounting to $111.20.

Judgment has been rendered in his favor in the Court of Claims for such amount. To the judgment so rendered an appeal has been taken to this court.

"Receiving ship *Wabash*" is a naval recruiting station in Boston Harbor. It is permanently located at one spot in the harbor. All the anchors have never been taken up at the same time for twelve years past. It is connected with the shore by a rope, by means of which a boat or scow with connecting crank plies between it and the wharf. A roof is built over the deck. Steam is only used for heating purposes and pumps. The *Wabash* is an old vessel built of wood about thirty-one years ago and is unseaworthy.

To such naval recruiting station claimant was assigned for duty. He claims that as he performed the duties of executive officer, duties similar to those of executive officers on cruising ships when in port, he is entitled to sea pay.

It is contended in behalf of the Government that a naval officer is only entitled to sea pay when he renders sea service. "Sea service" in the U. S. Navy is defined by law and by naval regulations made in accordance with law. It has been the subject of a recent decision of this court, *United States* vs. *Symonds* (120 U. S. R., 46).

The position of claimant is that the *Wabash* was in service under the order of the Secretary of the Navy;

that it was employed by authority of law; that it was stationed in Boston Harbor, and is therefore at sea. It is claimed for these reasons that duty on board the *Wabash* is sea service, and that its officers are entitled to sea pay.

It is not denied on behalf of the Government that "sea service" might be rendered on board a vessel in Boston Harbor. But it is contended that such service must not only be under order of the Secretary of the Navy on a vessel employed by authority of law, but that the vessel must be in active service—*i. e.*, a sea-going vessel. It is claimed—

*First.* Receiving-ships of the United States Navy are not, "except as may sometimes be the case, while going from one port to another," sea-going vessels.

*Second.* The *Wabash*, during the period of claimant's service on board of her, was not a sea-going vessel.

The question is presented to this court for its decision.

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## ASSIGNMENTS OF ERROR.

The court erred:

(1) In finding, as a conclusion of law, upon the facts as found, that the claimant is entitled to recover the sum of $111.20.

(2) In finding that claimant is entitled to recover any amount.

(3) In ordering, adjudging, and decreeing "that the said Edward T. Strong do have and recover of and from the United States the sum of one hundred and eleven $\frac{20}{100}$ dollars ($111.20)."

## BRIEF OF ARGUMENT.

The questions presented are—

*First.* Is all possible service which may be rendered by an officer of the United States Navy on a vessel employed by authority of law at sea "sea service?"

*Second.* Are the officers attached to a vessel employed by authority of law, permanently stationed in a harbor and not commissioned for sea service—the purpose of her employment being either in aid of shore service or actual shore service—entitled to sea pay?

*Third.* Are the officers attached to a vessel employed by authority of law, permanently stationed in a harbor, not commissioned for sea service, the employment of such vessel being in shore service, the vessel unseaworthy, and equipped for permanent location in a harbor, entitled to sea-pay?

*Fourth.* Is it necessary that officers should be attached to a "sea-going vessel" in order to be entitled to "sea pay?"

*Fifth.* Has the Navy Department, by regulations made in conformity with law, the power to employ a vessel of the United States Navy on shore duty?

*Sixth.* Has the following regulation any force or effect, the same having been observed in fixing the pay of naval officers from its adoption until the present time?

NAVY DEPARTMENT, *November* 1, 1843.

The receiving-ships at the several stations are not to be considered "vessels in commission for sea service," except, as may sometimes be the case, while going from one port to another.

DAVID HENSHAW,
*Secretary of the Navy.*

In the law fixing the pay of naval officers "when at sea" means "sea service." In the early days of the Republic the pay of naval officers was not graded according to the character of the service rendered. When the distinction as to pay was first made (4 Stat. L., 755), "sea service" was placed in apposition to "shore duty," as in the later statutes "when at sea" is placed in apposition to "shore duty."

"Sea service" broadly defined would mean any service rendered at sea. In the United States Navy, however, the meaning has always been confined to service rendered at sea under order of the Secretary of the Navy. It is a matter of history that a very liberal meaning was given to the term "sea service" by the Navy Department. In consequence thereof, Congress limited its meaning by act of June 1, 1860 (12 Stat. L., 27; R. S., sec. 1571), as follows:

> No service shall be regarded as sea service except such as shall be performed at sea, under the orders of a Department, and in vessels employed by authority of law.

It will be observed that the above is a limiting statute, and narrows the broad definition of the term "sea service." It does not declare that *all* "service shall be regarded," etc., nor does it deprive the Navy Department of the power by regulation to still further limit the meaning.

Naval Regulations of 1876 (p. 85, par. 38) is as follows:

> Duty on board a sea-going vessel of the Navy in commission, on board a practice ship, on board a coast survey vessel actually employed at sea, will be regarded by the Department as sea service.

That such regulation had the force of law is not only not controverted but is recognized by the decision in the *Symonds Case* (120 U. S. R., 46). It was in that case, virtually, although not in terms decided, that a commission of a vessel for sea service was not necessary, employment by a Department being the equivalent to a commission. But it is in the opinion recognized that the vessel, so employed, must be in active service (*i. e.*, sea-going). Justice Harlan says:

> We concur in the conclusion reached by the Court of Claims, namely, that the sea pay given in section 1556 may be earned by services performed under the orders of the Navy Department, in a vessel employed with authority of law *in active service* in bays, inlets, roadsteads or other arms of the sea, under the general restrictions, regulations, etc.

It is the status of the vessel, not the character of the duties performed, which entitle the officer to his pay either for sea service or shore duty. An officer under Naval Regulations may, although on shore in special cases, if attached to a sea-going vessel, be entitled to sea pay as constructively at sea, rendering "sea service." A vessel commissioned for sea service, although in fresh water, may be constructively at sea and its officers entitled to sea pay. Officers under decisions of the Court of Claims may serve on sea-going vessels of the United States, subject to its rules, regulations, and discipline; and yet, if not by orders attached to such vessels, regarded and paid as on shore duty.

For example, an officer attached to a vessel in active service is entitled to sea-service pay if in a hospital for

three months, unless sooner detached; when he has leave of absence on account of ill health for three months; when in attendance on a court-martial. (Naval Regulations, 1876, pp. 123, 124.)

A vessel in commission for sea service will be regarded as sea-going when in active service on the Great Lakes. (Naval Regulations, 1876, p. 124). A vessel in commission for sea service is recognized as sea-going when in active service on rivers. On the other hand, in *Schoomaker's Case* (19 C. Cls. R., p. 172), claimant had served 108 days on vessels employed by authority of law, under the order of a Department, in active service at sea. He was a naval officer on duty, under the general restrictions, regulations, and requirements that are incident or peculiar to service on the high seas. The court decided that as he had not been *ordered to perform sea service*—that is to say, as he was not *ordered for duty* on a sea-going vessel, he was only entitled to receive shore pay. There can be no question but that Schoomaker had as arduous duty as claimant in this case and was as fully subject to regulations.

This court is also referred to *Carpenter's Case* (15 C. Cls. R., p. 247).

It therefore becomes important to determine whether in law or fact the *Wabash* was in active service during the period embraced in the claim.

As a matter of fact, the "*Wabash*" was not in active service; that is to say, not in active "sea service"—sea-going.

When, under orders of the Secretary of the Navy, a vessel is employed by authority of law for active service on the high seas, she may be temporarily in port, partly dis-

mantled, and in bad repair, and yet her service be "sea service." This was the condition of the "*New Hampshire*," under the evidence as presented in the *Symonds Case, supra*. The "*New Hampshire*" was commissioned for sea service as other apprentice training-ships at the time Symonds took command. Subsequently, and whilst Symonds retained the command, the Secretary of the Navy issued an order to the effect that "on and after the 1st day of August next the '*New Hampshire*' * * * will not be considered in commission for sea service." The duties of the officers of the ship, and the purpose for which she had been commissioned originally, remained the same. Such order was regarded by this court as an arbitrary attempt of the Navy Department to change the status of the ship without changing its employment for the purpose of changing the pay of its officers, and as therefore unauthorized by law.

On the other hand, it is submitted that if a vessel is not under orders of the Secretary of the Navy, employed by authority of law for "sea service," that is for service on the high seas, she may lie in a harbor, technically at sea, fully armed and equipped, in complete repair, and get her services be "shore duty." The requirements of the law and regulations made in conformity therewith have not been complied with in such manner as to render her service "sea service."

In other words, if the employment of a vessel is for sea-service, being temporarily out of repair will not change the character of the employment, nor will a vessel fully equipped and ready for service be considered as in "sea service" until so actually employed.

A receiving ship is not in "sea service." It is a recruiting station in the Navy. It is a station that in some cases (not in the case at bar) may be moved from port to port. During the time it may be so sailing it is not, in fact, a receiving ship.

The "*Wabash*" is dismantled as unseaworthy, and has been lying in the same spot in Boston Harbor for over twelve years past. A roof is built over its deck; its anchors have during that period never been lifted at the same time. It is for all practical purposes an island nearly as stationary as the shore itself or a light-house. The communication between the house ship and the wharf is by means of a rope, by means of which a scow or boat works backwards and forwards. Steam is used, not for propelling the ship, but for heating purposes and the pumps.

She is not actually a sea-going vessel—she is not constructively so, because in her present condition she fills every purpose of her employment of a recruiting station in Boston Harbor fully as well as the best ship in the Navy. She would so fill every purpose just as well if kept in position resting on a mud bottom and anchors, with weather-boarded hull, as may possibly be her present condition.

Receiving-ships are not regarded by the accounting officers of the Treasury as vessels in commission for sea service, nor their officers entitled to sea pay or rations allowed to officers on sea duty (Digest of Second Comptroller's Opinions of 1853, par. 51; Comptroller's Digest of 1869, par. 1840; Finding XII.)

## FINDING IX

Claimant's service aboard the United States receiving ship Wabash continued from the 20th day of February, 1886, until the 4th of May, 1886, during which period he has been allowed and paid shore pay of an officer of his grade, and has not been allowed a ration or commutation therefor.

## FINDING X.

United States receiving ship Wabash, during the time of Claimant's service thereon, was not in what is technically known as a commission for sea service.

## FINDING XI.

Duty on board a receiving ship since 1843 has not been regarded as "sea service". The Navy Order then adopted was as follows:

NAVY DEPARTMENT, *November* 1, 1843.

The receiving ships at the several stations are not to be considered "vessels in commission for sea service", except, as may sometimes be the case, while going from one port to another.

DAVID HENSHAW,
*Secretary of the Navy.*

## FINDING XIII.

A note is printed in the Navy Register of 1859 and 1860 as follows:

NOTE.—The sea and other service affixed to the names of officers in the Register is computed to the 1st of January, 1859. As a general rule the "sea service" with which an officer is credited is for duty

performed under orders from the Department as part of the complement of a vessel of war belonging to the Navy in commission for sea service. Officers on the Coast Survey are allowed sea service for the time they are actually afloat. No credit is given for service in revenue and merchant vessels.

Naval regulations in force at the time of the passage of the third section of the act of 1860 (12 Stat. L., 27), of which section 1571, Revised Statutes, is a reproduction, have the force of law (*Gratiot* vs. *The United States*, 4 How., 80); *Ex parte Reed* (100 U. S. R., 13).

Revised Statutes, 1547, is as follows:

> The orders, regulations, and instructions issued by the Secretary of the Navy prior to July 14, 1862, with such alterations as he may since have adopted, with the approval of the President, shall be recognized as the regulations of the Navy, subject to alterations adopted in the same manner.

If it is essential for a vessel in the United States Navy to be employed as sea-going under orders of the Secretary of the Navy before the officers attached thereto are entitled to sea pay, it is respectfully submitted that the judgment of the court below should be reversed by this court.

A. H. GARLAND,
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ROBERT A. HOWARD,
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# Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES,
*Appellant,*
vs.
EDWARD T. STRONG,
*Appellee.*
No. 1381.

## APPEAL FROM COURT OF CLAIMS.

BRIEF OF

LINDEN KENT,
*Solicitor for Appellee.*

BYRON, PR., 930 7TH STREET, N. W.

# Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES, *Appellant*,
*vs.*
EDWARD T. STRONG, *Appellee.*
No. 1381.

## APPEAL FROM COURT OF CLAIMS.

## BRIEF ON BEHALF OF THE APPELLEE.

Edward T. Strong, the appellee, filed his petition in the Court of Claims against the United States, to recover an alleged unpaid balance due him as a lieutenant-commander in the Navy, of less than four years standing, for a period commencing on the 20th day of February, and ending on the 11th of May, 1886.

The Court of Claims entered up judgment in his favor for $111.20, the same being the difference between his pay for "shore service," which he received during the above period, and the pay for "sea service," which he alleged should have been paid him during the said period.

From this judgment the United States appealed.

From the findings of fact by the Court of Claims it will appear that on the 4th day of February, 1886, the claimant was ordered, by the Secretary of the Navy, to report for duty as executive on board the United

States Receiving Ship "Wabash," anchored in Boston Harbor, in Massachusetts Bay. He did so report on the 20th day of February, 1886, and continued from that time henceforth, down to the 4th day of May, 1886, to discharge his duties on board said ship; that he performed the duties of executive officer of said vessel, which said duties are similar to those of executive officers on cruising ships, and in addition to these general duties he had others which were more exacting and arduous than those on board cruising ships.

That the character of the service of the claimant remained the same during the period of his service on board said vessel.

During the time he was attached to said vessel, claimant was required to have his quarters on board, and was obliged to wear his uniform, to mess on board the vessel, and was not permitted, by the rules of the service, to live with his family.

Since the date when claimant reported on board the "Wabash," she has been anchored in Boston Harbor, about three hundred feet from the shore, to which there was communication by means of boats; and, also, a scow that plies between the vessel and the shore by means of a crank and a rope; that the said vessel was, during the period of service thereon by the claimant, under the orders and direction of the Secretary of the Navy, and is employed in her present service by authority of law; that during the period of the claimant's service thereon she was not in a safe condition for cruising; that she is a sailing and steam vessel and had on board sails, spars, and tackle; she was capable of being taken out to sea under steam, her machinery and boilers being sufficient for that purpose, and that she could have been taken out to sea under sail, but that in the condition of her boilers

and machinery, and her sailing apparatus, without repairs, it would not, in either case, have been advisable or safe.

## ARGUMENT.

The question in this case is whether the services of the claimant under the above findings were performed at sea within the meaning of section 1556 of the Revised Statutes, which provides as follows:

> "Lieutenant-Commanders during the first four years after date of commission, when at sea, two thousand eight hundred dollars; on shore duty, two thousand four hundred dollars; on leave or waiting orders, two thousand dollars, etc."

Section 1571 of the Revised Statutes prescribes what is "sea service," as follows:

> "No service shall be regarded as sea service except such as shall be performed at sea under orders of a department, and in vessels employed by authority of law."

All of the constituent elements which were found by the court, in the case of *United States vs. Symonds*, 120 *U. S.*, 46, to entitle the claimant to be paid for "sea service" are present in the case at bar.

1. It is conceded that the services of the claimant, Strong, were performed under the orders of the Secretary of the Navy.

2. That the services were performed as an officer of and "in a vessel employed with authority of law."

3. Such being the undisputed facts, in the language of the Supreme Court of the United States in the Symonds case, construing section 1571 of the Revised Statutes with respect to what is sea service, "if they

were performed 'at sea,' his compensation therefor is absolutely fixed by section 1556."

Were these services performed "at sea"? They were performed in Boston Harbor, in Massachusetts Bay, on a ship anchored in navigable waters as much "at sea" as was the training ship "New Hampshire," anchored in Narragansett Bay during the term of Symonds' service. It will be admitted that Massachusetts Bay is an arm of the sea, where the tide ebbs and flows.

We have, then, the three elements which, under the statute, in accordance with the opinion of the Supreme Court, entitle the claimant to sea pay:

1. Services under the order of the Secretary of the Navy.

2. In a vessel employed with authority of law.

3. Such services performed "at sea."

The opinions in the Symonds case make it unnecessary that we should consider further the effect of particular orders or regulations of the Navy on the question of what should be regarded as sea service.

The statute confers no such power upon the Secretary acting alone, or by direction of the President.

Sea service cannot be converted into shore service by executive orders if they were in fact performed when at sea.

As to the character of the service, it is established by the testimony that the claimant performed the duties of an executive officer on board the "Wabash," which duties are similar to those of executive officers on board a cruising ship; that during the time he was required to have his quarters on board the vessel, to wear his uniform, and was not permitted, by the rules of the service, to live with his family. In some re-

spects there were additional duties, and more arduous than duty on board a cruising ship.

The general duties of an executive officer are prescribed in the *Navy Regulations of* 1876, p. 52, *Section V*, under the head of "Aid or Executive of the commanding officer. His duties as equipment officer."

They cover nearly six pages of the regulations and are embraced in paragraphs from 1 to 51 inclusive, and the duty prescribed in *each* and *every* paragraph, is predicated upon service performed on board of a vessel.

The character of the duties prescribed in said regulations are such as are required of the executive of a receiving ship, and are necessary in the the administration of the discipline of the ship.

They are the same regulations which prescribe the duties of the executive of a cruising vessel.

The regulations to which the executive of the "Wabash" was subjected while serving at anchor in Boston Harbor, are exactly those which would have been enforced had she been put in order and taken to sea. The character of the service of the officer, and the regulations for the discipline of the ship, would in each case have been the same.

No effort is made to distinguish between the services of the executives, respectively, of the "New Hampshire' (in the Symonds case) and of the "Wabash." The findings with respect to the duties of the two officers are the same in both cases. They are both subject to the same discipline. Their duties are prescribed by the same regulation and are found in each case "to be similar to those of executive officers on cruising ships, and in addition to these general duties * * others which were more exacting and arduous than those on board cruising ships."

In the Symonds case the Supreme Court says:

> "We concur in the conclusion reached by the Court of Claims, namely, that the sea pay given in section 1556 may be earned by services performed under the orders of the Navy Department, in a vessel employed with authority of law in active service in bays, inlets, roadsteads, or other arms of the sea, under the general restrictions, regulations, and requirements that are incident or peculiar to service on the high seas. She was a training ship, anchored in Narragansett Bay during the whole time covered by the claim of appellee, and was subject to such regulations as would have been enforced had she been put in order and used for the purpose of cruising or as a practice ship at sea. Within the meaning of the law Symonds, when performing his duties as executive officer of the 'New Hampshire,' was 'at sea.'"

It is contended that the expression above "in active service" distinguishes the "New Hampshire" from the "Wabash," and, notwithstanding that, the sevices of the officers, respectively, are found to be the same the executive of the "Wabash," it is said, is not entitled to pay for sea service, because the "Wabash" is not "in active service."

The "Wabash" was "at sea." She was "under the orders of a department" and was "employed by authority of law."

It is impossible to discriminate in law between the degrees of activity of services in the two cases. Neither, under the orders of the department were considered "in commission for sea service." This did not affect the right of the officer to his compensation, which is absolute under the statute.

The Symonds case was decided upon the assumption that "the New Hampshire was not, during the period in question, in such condition that she could be safely

taken out to sea beyond the main land," and that she was "anchored in Narragansett Bay during the whole time covered by the claim of appellee."

Hence, if the assertion with respect to the vessel being "in active service" can be enlightened by the activity of its movement, the "New Hampshre" was not more in "active service" than was the "Wabash." Whilst with respect to the capacity for movement the "Wabash" was superior to the "New Hampshire," being a steam vessel capable of being taken out to sea under steam, and also with sails, spars, and tackle on board, capable of being taken out under sail.

The regulations of the Navy contemplated the removal of receiving ships from one port to another. They are not accurately described as permanent recruiting stations. The duties of the executive on board the vessel are entirely different from what they would be if he were on the land. On board these is the ship's crew, the drilling and daily routine of ship discipline and practice which make the duties of the executive, with respect thereto, similar to those on board a cruising ship. The Navy *regulations* 1876, *p.* 168, *par.* 18, with respect to receiving ships, is as follows:

"The Commanding and other officers attached to the vessel to receive recruits and to conform to the regulations for other vessels in commission, as far as applicable, and are to live and mess on board, unless especially exempted by the Secretary of the Navy."

And *par.* 10, *page* 167, provides that "receiving vessels shall be completely equipped and every means furnished for exercising the recruits," and that they shall be "exercised at the guns, small arms, heaving

the lead, etc., sails, pulling in boats, exercise of the boat's howitzers, and particular attention must be paid to the instruction of lands men and boys."

It is respectfully submitted that there is no difference in law between the Symonds case and the case of the appellee, Strong.

LINDEN KENT,
*Att'y for Appellee.*